

Docket No. 5699-11-CON
Serial No. 10/081,120

Remarks

Summary of Office Action of March 2, 2005

This letter is responsive to the Examiner's Office Action of March 2, 2005. At the time of that Office Action claims 1 - 7, 13 - 21, 24, 28, 29, 32 - 34, 41 - 54, and 57 - 83 were pending in the case. The Office Action indicated that:

- (a) Claims 1 - 7, 13 - 21, 24, 28, 29, 32 - 34, 41 - 45 and 72 - 82 are allowed;
- (b) Claims 8 - 12, 22, 23, 25 - 27, 30, 31, 35 - 40, 55 and 56 had been cancelled;
- (c) Claims 46 - 52, 54, 57 - 61, 63, and 64 stand rejected; and
- (d) Claims 53, 62 and 65 - 71 are objected to.

2) Office Action Improperly Made "Final"

By a telephone discussion with the Examiner on February 18, 2005, the Applicant reminded the Examiner that there had been no disposition of claims 50, 53, 62, 65 or 83. The Applicant had noted this in the Applicant's Response to Office Action submitted August 11, 2004.

The Office Action of March 2, 2005 rejected claim 50 and (and, claims 46 and 58, previously rejected on other grounds) as being anticipated by US Patent 4,191,107 of Ferris. This is a new ground of rejection not made in the Office Action of May 11, 2004 or in the Office Action of December 13, 2004.

The Applicant respectfully submits that the Applicant was entitled to a full and fair, non-Final opportunity in which to respond to these rejections. Therefore, the Applicant respectfully submits that the Office Action of March 2, 2005 was not properly made final, and requests that finality of the Office Action be reconsidered and withdrawn.

3) Office Action Incomplete: No Disposition of Claim 83?

The Office Action Summary states that claims 1 - 7, 13 - 21, 24, 28, 29, 32 - 34, 41 - 45 and 72 - 82 are allowed. The Detailed Action on Page 1 - 7, 13 - 21, 24, 28, 29, 32 - 34, 41 - 45 and 72 - 83 stand allowable. The Applicant respectfully requests clarification with respect to claim 83.

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The Applicant requested a disposition of claim 83 in the Response of August 11, 2004, and again requested a disposition by telephone on February 18, 2005. The Examiner undertook to make such a disposition.

The Applicant respectfully requests (a) an Office Action in which a disposition of claim 83 is clearly provided; and, in the event that claim 83 is rejected, (b) that the Applicant be provided with a full and fair non-Final opportunity in which to responds to that Office Action.

4) Objection Under 35 USC 112 - Claim 1

The Office Action continues to include a rejection under 35 USC 112 with respect to terminology used in claim 1.

The Applicant notes that the subject matter of the rejection was addressed in the Response to Office Action submitted August 11, 2004. In that response the claim was amended as requested by the Examiner.

The Applicant respectfully requests confirmation (a) that the Amendment of August 11, 2004 has been entered in this case; and (b) that the continued inclusion of the objection of claim 1 under 35 USC 112 in the Office Action of March 2, 2005 was inadvertent.

5) Cancellation of Independent Claims 46, 57 and 58

The Applicant has cancelled a total of 15 claims, those claims being independent claims 46, 57 and 58, and dependent claims 47 to 54, 59 to 61 and 65.

These claims have been cancelled with traverse, and without prejudice to their subsequent prosecution by way of continuation or division, as the Applicant may elect.

6) Grounds of Traverse

The grounds of traverse of the rejections of claims 46, 57, and 58, and the dependent claims cancelled herein, include the same grounds of traverse as previously stated.

In particular, the Applicant traverses any and every contention that any of these claims is anticipated by either the Chi Patent or the Ferris patent. The Chi patent does not show a rail road

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can having a cantilevered articulation capable of passing vertical shear forces between the adjacent car body units. On the contrary, Chi's invention, such as it may have been, was directed to a no-slack connection having a rotational degree of freedom permitting vertical angling at either end. As such the connection is not able to pass either a moment couple or a shear force between the car body units. The Ferris patent does not show a cantilevered articulated connection, but rather a connection that is squarely centered over the shared truck between the adjacent body units.

The Applicant reserves the right to make further arguments and to provide more detailed arguments with regard to these rejections should a continuation or division of this case be filed.

8) Rejection Under 35 USC 103 - Chi and Biegel - Claim 54

The commentary submitted by the Applicant on August 11, 2004 with regard to Biegel was incorrect. The Applicant confused the Biegel reference with the Lich reference formerly cited in this matter. The Applicant apologises for any confusion this may have caused.

9) Amendments to Claims 62 and 66

Claims 62 and 66 have now been re-written in independent form. The Applicant respectfully submits that claims 62 to 64, and 66 to 71 are therefore in a condition for allowance.

10) Re-Introduction of Non-Elected Dependent Claims

Among the claims presently allowed are a number of claims of which dependent claims had previously been cancelled during prosecution of this case as claims to non-elected species. That is, non-elected dependent claims 8 - 12, 22, 23, 25 - 27, 30, 31 and 35 - 40 all depended from claims that have now been allowed. To the extent that genus claims have been allowed, the Applicant respectfully requests that those previously cancelled non-elected dependent claims be re-introduced into the case. Those reintroduced dependent claims are now identified, respectively, as 84 - 88, 89, 90 - 92, 93, 94 and 95 - 100.

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11) Conclusion

In view of the foregoing arguments and claim amendments the applicant submits that the claims are in a condition to permit allowance. Therefore the applicant requests early and favourable disposition of this application.

Respectfully submitted,

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